IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL REVISION APPLICATION NO. 31 OF 2003

1. Pandurang Parsekar,
married, of full age,

2. Miss Chandan Parsekar,
unmarried, of full age,

3. Mrs. Rohini @ Malani
Parsekar, married, of
full age,

All residents of H.No.318,
Vondamol, Velguem,
Bicholim, Goa. ... Applicants.

versus

The State
(Bicholim Police Station) ... Respondent.

Mr. S. D. Lotlikar, Senior Advocate with Mr. N. Manerkar, Advocate for the Applicants.

Mrs. Winnie Coutinho, Additional Public Prosecutor for the State.

CORAM: P. V. HARDAS, J.

DATED: 11TH JULY, 2003.

ORAL JUDGMENT

The Applicants/Original Accused in Sessions Case No.5 of 2002, being aggrieved by the Order passed by the learned Sessions Judge, North Goa, at Panaji, dated 18th June, 2003, in Criminal Miscellaneous

Application No.14 of 2003, have filed the present revision assailing the aforesaid Order.

2. The facts in brief, as are necessary for the decision of this revision are set out hereunder:-

The Applicants/Original Accused are being prosecuted, in Sessions Case No.5 of 2002, pending on the file of the learned Additional Sessions Judge at Mapusa, for an offence punishable under Sections 304-B, 498-A r/w Section 34 of the Indian Penal Code. The recording of the evidence in this case has already commenced. The Applicants/Original Accused filed Criminal Miscellaneous Application No.14 of 2003 before the learned Sessions Judge, North Goa, Panaji, under Section 408 of the Code of Criminal Procedure, praying for transfer of the case pending on the file of the learned Additional Sessions Judge at Mapusa to the Court of learned Additional Sessions Judge, Panaji, on the ground that the learned Public Prosecutor appearing in the said trial created apprehension in the minds of the Applicants/Original Accused that they will not get fair and impartial trial. It was pleaded in the application that the Applicants/Original Accused are the in-laws of deceased Smt. Sindhu @ Suyesha, wife of Rajaram Parsekar. It is further alleged in the application that the deceased Smt. Sindhu @ Suyesha was working at

Dhumaskar Hospital as a nurse for about 6 to 7 years and was as such employed by Dr. Dhumaskar, who is the husband of the Public Prosecutor in the trial. It appears that there is no serious controversy regarding the facts pleaded in the application.

3. The learned Sessions Judge, North Goa, Panaji, while rejecting the application has observed that "it is no doubt true that the Public Prosecutor must be fair in presentation of the case of the prosecution. The Public Prosecutor should not be partial either to the prosecution or the Accused. The learned Sessions Judge, Panaji, further observed "in this particular case only apprehension of the Applicants is that, that the Public Prosecutor Mrs. Shoba Dhumaskar is taking more interest in the case of the prosecution. This is not a ground for transfer unless it is shown that the Public Prosecutor is also biased against the Applicants".

4. For transfer of the case, the party is not required to demonstrate that justice will inevitably fail but it has to show that its apprehension is reasonable. For judging the reasonableness of the apprehension the state of mind of the person who entertains the apprehension is no doubt relevant but that is not all. The apprehension must not only be entertained by the party but must also appear to the

Court to be a reasonable apprehension. The apprehension which is entertained by a party should be based on some material and if the circumstances tend to create in the mind of the Accused/party an apprehension that he may not have a fair decision, according to me, should be expedient to order transfer. Of course, the Courts are not to be guided by fanciful apprehensions which are entertained by the parties. There must be adequate material for such apprehension in the mind of the party. In the present case, the facts which are stated above, according to me, would certainly give rise to a reasonable apprehension in the mind of the Accused that the learned Public Prosecutor appearing in the trial may not dispassionately and fairly conduct the prosecution. Of course, this is not to say that the apprehension which is entertained by the Applicants/Original Accused in the circumstances may be truthful. However, the Court has to see whether the apprehension is reasonable and whether the apprehension is based on material on the basis of which any prudent person would entertain such an apprehension. It is not necessary in such cases to prove that the learned Public Prosecutor was also biased against the Applicants/Original Accused. It is enough if according to the Applicants/Original Accused they entertain a reasonable apprehension that the learned Public Prosecutor was acquainted with the deceased and, therefore, would not conduct the prosecution in a fair

manner and as such the apprehension of bias can legitimately be drawn by the Applicants/Original Accused. In my considered opinion, therefore, the learned Sessions Judge, Panaji, in the peculiar facts of this case, ought to have allowed the transfer application.

5. In the result, therefore, Criminal Revision Application No. 31 of 2003 is allowed. The Order impugned in this revision is hereby quashed and set aside and the learned Sessions Judge, Panaji, is directed to transfer the case pending on the file of the learned Additional Sessions Judge, Mapusa, and either retain the matter himself or assign it to the Court of learned Additional Sessions Judge, Panaji, for trial.

P. V. HARDAS, J.

RD.